

## **TERMS AND CONDITIONS**

### **1 DEFINITIONS**

The following words both on the face and back hereof have the meanings hereby assigned:

"Bill of Lading" means the present document.

"Carrier" means C.U.LINES LIMITED.

"Carriage" means the whole or any part of the operations and services undertaken by the Carrier in respect of the Goods, including without limitation the receipt, loading, unloading, storing, warehousing, and handling of the Goods.

"COGSA" means the United States Carriage of Goods by Sea Act, 1936 and any amendments thereto.

"Combined Transport" arises if the Place of Receipt and/or Place of Delivery are indicated in the relevant spaces on the face hereof.

"Container" includes any container, trailer, transportable tank, flat or pallet, cradle, sled or any similar article of transport used to consolidate or transport the goods.

"Freight" includes all charges payable to the Carrier in accordance with the applicable Tariff and this Bill of Lading.

"Final Destination" on the face hereof is solely for the purpose of the Merchant's reference and the carrier's responsibility in respect to the Goods shall in all case cease at the time of delivery of the Goods at the port of discharge or Place of Delivery.

"Goods" means whole or any part of the cargo described on the face of this Bill of Lading which has been received from the Shipper and accepted by the Carrier and, if the cargo is packed into container(s) supplied or furnished by or on behalf of the Merchant, it includes the container(s) as well.

"Hague Rules" means the provision of the International Convention for the Unification of Certain Rules Relating to Bills of Lading done at Brussels August 25, 1924.

"Hague-Visby Rules" means the provision of the Hague Rules as Amended by the Protocol done at Brussels on February 23, 1968. References to the internal law of a State shall be deemed to exclude all principles of private international law applied by such State.

"Holder" means any person for the time being in possession of this Bill of Lading to whom the property interest in the goods has passed on or by reason of the consignment of the goods or the endorsement of this Bill of Lading or otherwise.

"Merchant" includes the Shipper, Consignee, holder of this Bill of Lading, the receiver of the Goods and any Person owning, entitled to or claiming the possession of the Goods or of this Bill of Lading or anyone acting on behalf of this Person.

"Person" includes an individual, corporation, company or other legal entity.

"Place of Delivery" means the place where the Goods are delivered by the Carrier or the Participating Carrier to the Merchant.

"Place of Receipt" means the place where the Goods are received from the Merchant by the Carrier, Participating Carrier or their respective agents.

"Port of Discharge" means the place where the Goods are to be discharged from the Vessel.

"Port of Loading" means the place where the Goods are received for marine transport by the Carrier, or Participating Carrier or their respective agents.

"Port-to-Port Transport" means carriage between the Port of Loading and the Port of Discharge.

"Subcontractor" includes but is not limited to owners, operators and space providers of vessels, stevedores, terminals and groupage operators, underlying carriers, road and rail transport operators, warehousemen and any independent contractor employed by the Carrier in performance of the

Carriage and any direct or indirect Subcontractors, servants and agents thereof whether in direct contractual privity or not.

"Vessel" includes the vessel(s) named in this Bill of Lading, any substituted vessel(s), any vessel to which transshipment may be made in the performance of this contract and any vessel, ship, craft, lighter or other means of transport whatsoever, owned, chartered, operated or controlled and used by the Carrier in the performance of this contract which is or shall be substituted, in whole or in part, for the vessel(s) named on the face hereof.

## **2 CARRIER'S TARIFF**

The terms and conditions of the Carrier's applicable Tariff are incorporated into this Bill of lading. Particular attention is drawn to terms and conditions concerning additional charges including detention/demurrage, per diem, storage expenses and legal fees, etc. A copy of the applicable Tariff can be obtained from the Carrier or its agent upon request and the Merchant is deemed to have known and accepted such Tariff. In the case of any conflict or inconsistency between this Bill of Lading and the applicable Tariff, it is agreed that this Bill of Lading shall prevail.

## **3 WARRANTY**

The Merchant warrants that in agreeing to the terms and conditions in this Bill of Lading, it is the owner of the Goods or has the authority of the owner of the Goods or of the Person entitled to the possession of the Goods or of this Bill of Lading.

## **4 SUB-CONTRACTING AND INDEMNITY**

4.1 The Carrier shall be entitled to sub-contract on any terms whatsoever the whole or any part of the Carriage, including liberty to further sub-contract.

4.2 The Merchant undertakes that no claim or allegation whether arising in contract, bailment, tort or otherwise shall be made against any servant, agent, or Subcontractor of the Carrier which imposes or attempts to impose upon any of them or any Vessel owned or chartered by any of them any liability whatsoever in connection with the Goods or the Carriage of the Goods whether or not arising out of negligence on the part of such Person. If any such claim or allegation should nevertheless be made, the Merchant agrees to indemnify the Carrier against all consequences thereof. Without prejudice to the foregoing, every such servant, agent and Subcontractor shall have the benefit of all terms and conditions of whatsoever nature contained herein or otherwise benefiting the Carrier under this Bill of Lading, as if such terms and conditions were expressly for their benefit. In entering into this contract, the Carrier, to the extent of such terms and conditions, does so on its own behalf and also as agent and trustee for such servants, agents and Subcontractors.

4.3 The provisions of Clause 4.2, including but not limited to the undertaking of the Merchant contained therein, shall extend to all claims or allegations of whatsoever nature against other Persons chartering space on the carrying Vessel.

4.4 The Merchant further undertakes that no claim or allegation in respect of the Goods shall be made against the Carrier by any Person which imposes or attempts to impose upon the Carrier any liability whatsoever in connection with the Goods or the Carriage of the Goods other than in accordance with the terms and conditions of this Bill of Lading, whether or not arising out of negligence or misdelivery on the part of the Carrier, and if any such claim or allegation should nevertheless be made, to indemnify the Carrier against all consequences thereof.

## **5 CARRIER'S RESPONSIBILITY AND CLAUSE PARAMOUNT**

### **5.1 Port to Port Transport**

If Carriage is Port to Port Transport, the responsibility (if any) of the Carrier for loss or damage to the Goods occurring from the time when the Goods are loaded on board the Vessel at the Port of Loading until the time when the Goods are discharged from the Vessel at the Port of Discharge shall be determined in accordance with the provisions of Clause 5.3.

The Carrier shall be under no liability whatsoever for loss or damage to the Goods or non-delivery or misdelivery howsoever caused if such loss or damage, non-delivery or misdelivery arises prior to loading onto or subsequent to discharge from the Vessel. Notwithstanding the above, in case and to the extent that any applicable law provides for any additional period of responsibility the Carrier shall have the benefit of every right, defence, limitation and liberty of the Hague Rules during such additional compulsory period of responsibility notwithstanding that the loss or damage did not occur at sea.

### **5.2 Combined Transport**

If the Carriage is Combined Transport then the Carrier undertakes to perform and/or in its own name to procure performance of the Carriage from the Place of Receipt or the Port of Loading whichever is applicable to the Place of Delivery or the Port of Discharge whichever is applicable and, save as is otherwise provided for in this Bill of Lading, the Carrier's liability for loss or damage to the Goods shall be as follows:

#### **5.2.1 If the stage of Carriage where loss or damage occurred is not known**

##### **5.2.1.1 Exclusions**

If the stage of the Carriage where the loss or damage to the Goods is not known then the Carrier shall be liable for loss and damage to the Goods save that the Carrier shall be relieved from liability for any loss or damage to the extent that such loss or damage was caused by:

- (i) An act or omission of the Merchant;
- (ii) Insufficiency or defective condition of packing or marking;
- (iii) Compliance with the instructions of persons entitled to give them;
- (iv) Handling, loading, stowage or unloading of the Goods by the Merchant;
- (v) Inherent vice of the Goods;
- (vi) Strike, lockout, stoppage or restraint of labour from whatever cause whether partial or general;
- (vii) A nuclear incident;
- (viii) Any cause or event which the Carrier could not avoid and the consequence of which it could not prevent by the exercise of reasonable diligence.

##### **5.2.1.2 Burden of Proof**

The burden of proving that any loss or damage was caused by one or more of the events mentioned in Clauses 5.2.1.1 (i) to (viii) shall rest upon the Carrier save that when the Carrier is able to demonstrate that, in the circumstances of the case, the loss or damage could be attributed to one or more of the events specified in Clauses 5.2.1.1 (ii) to (vii) then it shall be presumed that it was so caused and in such circumstances the burden of proof shall be on the Merchant to prove that the loss or damage was not caused wholly or partly by one or more of these events.

##### **5.2.1.3 Limitation**

If the Carrier is liable for loss or damage to the Goods then the amount of compensation shall be

calculated by reference to the invoice value of the Goods plus freight and insurance (if paid).

The Carrier's maximum liability hereunder shall in no circumstances exceed 666.67 SDR per package or other shipping unit, or 2 SDR per kilogramme of the gross weight of the Goods lost or damaged, whichever is the higher unless the value of the Goods has been declared by the Merchant with the consent of the Carrier and excess freight has been paid whereupon the declared value (if higher) as shown on the face of the Bill of Lading shall be substituted for the above limit and any partial loss or damage shall be adjusted pro rata on the basis of such declared value.

5.2.2 If the stage of the Carriage during which loss or damage occurred is known

Notwithstanding anything provided for in Clause 5.2.1 if the stage of the Carriage where loss or damage to the Goods is known then subject to the operation of Clause 5.3 which shall apply where loss or damage occurs to the Goods from the time when the Goods are loaded on board the Vessel at the Port of Loading until the time when the Goods are discharged from the Vessel at the Port of Discharge the Carrier's liability in respect of any such loss or damage occurring shall be determined as follows:-

5.2.2.1 By the provisions contained in any international convention or national law, which provisions cannot be departed from by private contract to the detriment of the Merchant, and would have applied if the Merchant had made a separate and direct contract with the Carrier in respect of the particular stage of the Carriage where the loss or damage occurred and received as evidence thereof any particular document which must be issued in order to make such international Convention or national law applicable; or

5.2.2.2 If no international convention or national law is applicable then the liability of the Carrier shall be determined pursuant to the provisions of Clause 5.2.1.

5.2.2.3 Subject to Clause 5.2.2.1 if loss or damage to the Goods is known to have occurred during a period when the Goods were in the custody of a Participating Carrier then the Carrier shall have the benefit of any and all rights, defences, exemptions, limitations and immunities contained in or incorporated by or compulsorily applicable to the Participating Carrier's tariff(s) or contract(s) with the Carrier (in addition to all of the rights, defences, exemptions, limitations and immunities contained in this Bill of Lading and the Carrier's tariff) and for this purpose such benefit, rights, defences, exemptions, limitations and immunities shall be deemed to be incorporated herein, and copies are obtainable from the Carrier upon request.

5.3 Clause Paramount

All the Carriage under this Bill of Lading (whether electronically produced or not) shall have effect subject to any legislation enacted in any country making the Hague or Hague-Visby Rules compulsorily applicable and in the absence of any such legislation in accordance with the Hague Rules or the COGSA in the case of the Carriage to or from the United States of America.

In circumstances where the Hague Rules are not compulsorily applicable but are contractually applicable then subject to Clause 7.2 (ad valorem declaration) the Carrier's responsibility shall in no event exceed GBP100 per package or customary freight unit.

If any terms of this Bill of Lading are held repugnant to the Hague Rules, Hague-Visby Rules, COGSA or any other compulsorily applicable legislation then such provision shall be null and void to the extent of such invalidity without invalidating the remaining provisions hereof.

References in the Hague, Hague-Visby Rules, or COGSA to carriage by sea shall be deemed to include references to inland waterways or waterborne carriage.

5.4 USA Clause Paramount (if applicable)

5.4.1 If the Carriage includes carriage to, from or through a port in the United States of America this Bill of Lading shall be subject to COGSA, the terms of which are incorporated herein and shall be paramount throughout carriage by sea and the entire time that the Goods are in the actual custody of the Carrier or its sub-contractor at the sea-terminal in the United States of America before loading onto the Vessel or after discharge therefrom as the case may be.

5.4.2 The Carrier shall not be liable in any capacity whatsoever for loss or delay to the Goods or non-delivery or misdelivery howsoever caused while the Goods are in the United States of America away from the sea-terminal and are not in the actual custody of the Carrier. At these times the Carrier acts as agent only for and on behalf of the Merchant and agrees to procure transportation of the Goods in accordance with the usual terms, conditions and tariff(s) of Participating Carriers. If for any reason the Carrier is denied the right to act as agent only at these times, its liability for loss and damage to the Goods or non-delivery or misdelivery thereof shall be determined in accordance with Clause 5.2 hereof.

5.4.3 If COGSA applies then the liability of the Carrier shall not exceed US\$500 per package or customary freight unit unless the value of the Goods has been declared on the face hereof with the consent of the Carrier and extra freight has been paid in which case Clause 7.2 (ad valorem declaration) shall apply and the declared value (if higher) shall be substituted for the limit and any partial loss or damage shall be adjusted pro-rata on the basis of such declared value.

5.4.4 Except as provided herein in Clauses 5.4.1 and Clause 5.4.2, and where COGSA does not apply by operation of law, Carrier's liability will be governed by COGSA unless its liability under some other body of law applicable to the particular stage of the transport where the loss occurred is more favourable to the Carrier (with regards to defenses and limitations), in which case that other body of law will apply.

## **6 NOTICE OF CLAIM AND TIME BAR**

6.1 Unless notice of loss or damage to the Goods and the exact nature of it be given in writing to the Carrier at the Place of Delivery before or at the time of the removal of the Goods into the custody of the person entitled to delivery thereof under this Bill of Lading, or if the loss or damage be not apparent, within three consecutive days thereafter, such removal shall be prima facie evidence of the delivery by the Carrier of the Goods described in this Bill of Lading.

6.2 Subject to Clause 6.3, the Carrier shall be discharged of all liability under this Bill of Lading unless suit is brought and written notice thereof given to the Carrier within nine months after delivery of the Goods or the date when the Goods is deemed to have been delivered. In the case of total loss of the Goods the period shall begin to run two months after the Goods have been received for transportation.

6.3 Notwithstanding Clause 6.2, where COGSA, the Hague Rules or Hague-Visby apply by incorporation or by force of law, the Carrier shall be discharged from all liability whatsoever in respect of the Goods, unless suit is brought within one (1) year of delivery or the date when they should have been delivered.

## **7 LIABILITY PROVISIONS**

### **7.1 Basis of Compensation**

Subject to any right the Carrier may have to limit its liability, compensation shall be limited to and calculated by reference to the value of the Goods at the place and time they are or should have been

delivered to the Merchant. For the purpose of determining the extent of the Carrier's liability for loss of or damage to the goods, the value of the Goods is agreed to be the net invoice value unless Clause 7.2 below is complied with. The Carrier shall in no circumstances whatsoever and howsoever arising be responsible for indirect loss or damage, loss of profit or consequential loss or damage.

#### 7.2 Ad Valorem Declaration of Value

The Merchant agrees and acknowledges that the Carrier has no knowledge of the value of the Goods, and that higher compensation than that provided herein may not be claimed unless the value of the Goods have been declared by the Merchant prior to the commencement of the Carriage is stated on this Bill of Lading and extra Freight is paid on such declared value if required. In that case, the amount of the declared value if embodied in the Bill of Lading shall be the basis for calculating the Carrier's liability, (if any), provided that such declared value shall be prima facie evidence, but shall not be conclusive on the Carrier and further provided that such declared value does not exceed the true value of the Goods at destination. Any partial loss or damage shall be adjusted pro rata on the basis of such declared value.

#### 7.3 Delay

The Carrier does not undertake that the Goods shall arrive at the Port of Discharge or Place of Delivery at any particular time or to meet any particular market or use. In no circumstances shall the Carrier be liable for loss or damage due to delay. If notwithstanding the foregoing, the Carrier is held responsible for any delay, it is hereby expressly agreed that the Carrier's liability shall in no event exceed the freight paid for the transport covered by this Bill of Lading.

#### 7.4 Scope of Application

The terms of this Bill of Lading shall apply in any action against the Carrier for any loss or damage whatsoever and howsoever occurring (and, without restricting the generality of the foregoing, including delay, late delivery and/or delivery without surrender of this bill of lading) and whether the action be founded in contract, bailment or in tort and even if the loss, damage or delay arose as a result of unseaworthiness, negligence or fundamental breach of contract.

#### 7.5 Supply of Container

The terms of this Bill of Lading shall govern the responsibility of the Carrier in connection with or arising out of the supply of a Container to the Merchant whether before or after the Goods are received by the Carrier for transportation or delivery to the Merchant. All Containers to be the joint and several responsibility of all the persons coming within the definition of the Merchant and must be redelivered clean and undamaged to a place or point of interchange nominated by the Carrier within the time prescribed in the Carrier's applicable tariffs and contracts, failing which each of such persons are jointly and severally liable for such detention, loss or expense incurred as a result thereof including but not limited to demurrage, container detention charges, the costs of replacement, transportation and repair.

#### 7.6 Non-Vessel-Operating Common Carriers

If this Bill of Lading is accepted by a Merchant acting as a non-vessel-operating common carrier (NVOCC), who has in turn concluded other contracts of carriage with third parties, the NVOCC hereby warrants that the contracts concluded by him in respect of the Goods subject to this Bill of Lading shall incorporate the terms and conditions of this Bill of Lading. The NVOCC further warrants to indemnify the Carrier, its servants, agents and Sub-contractors against all consequences of his failure to do so.

#### 7.7 Exceptions Clause

Carrier shall not be liable for any loss, damage, delay or failure in performance hereunder occurring at any time including before loading on or after discharge from the Vessel or during any voyage, arising or resulting from the happening and/or threat and/or after effects of one or more of the following acts of God, act of war, force majeure, quarantine restrictions, embargo, acts of public enemies, thieves, pirates, assailing thieves, hijacking, arrest or restraint of princes, rulers or people, seizure under legal process, act or omission of Shipper, its agent or representative, strikes or lock-outs or stoppage or restraint of labor from whatever cause, partial or general, riots or civil commotions, fire or latent defect.

7.8 When any claim is paid by the Carrier to the Merchant, the Carrier shall be automatically subrogated to all rights of the Merchant against any third party. The Merchant shall sign a subrogation receipt, release and indemnity immediately when requested by the Carrier.

7.9 Nothing in this bill of lading shall operate to limit or deprive the Carrier of any statutory protection, defence, exception or limitation of liability authorised by any applicable laws, statutes or regulations of any country. The Carrier shall have the benefit of the said laws, statutes or regulations as if it were the owner of any carrying Vessel.

## **8 LIMITATION OF LIABILITY**

The Carrier, the Vessel, her owner(s), operator(s), demise, time, slot and space charterers shall be entitled to the same rights of limitation as are or would be available to the owner of the Vessel under the Brussels Limitation Convention of 1957, the London Limitation Convention of 1976 or any other applicable convention, statute or law, governing the rights of shipowners to limit their liability in accordance with the tonnage or value of the Vessel in the jurisdiction in which any claim is brought under this Bill of Lading, and in any event shall always be limited to the true value of the Goods so damaged or lost.

## **9 METHODS AND ROUTES OF CARRIAGE**

9.1 The Carrier may at any time and without notice to the Merchant:

9.1.1 use any means of transport or storage whatsoever;

9.1.2 transfer the Goods from one conveyance to another including transshipping or carrying the Goods on a Vessel other than the Vessel named on the front hereof or by any other means of transport whatsoever, even though transshipment or forwarding of the Goods by such means may not have been contemplated or provided for herein;

9.1.3 sail without pilots, proceed via any route (whether or not the nearest or most direct or customary or advertised route) at any speed and proceed to, return to and stay at any port or place whatsoever (including the Port of Loading herein provided) once or more often, and in any order in or out of the route or in a contrary direction to or beyond the Port of Discharge once or more often;

9.1.4 load and unload the Goods at any place or port (whether or not any such port is named on the front hereof as the Port of Loading or Port of Discharge) and store the Goods at any such port or place, including but not limited to the use of off-dock storage at any port;

9.1.5 comply with any orders or recommendations given by any government or authority or any Person or body purporting to act as or on behalf of such government or authority or having under the terms of the insurance on any conveyance employed by the Carrier the right to give orders or directions.

9.2 The liberties set out in Clause 9.1 may be invoked by the Carrier for any purpose whatsoever whether or not connected with the Carriage of the Goods, including but not limited to loading or unloading other goods, bunkering or embarking or disembarking any Person(s), undergoing repairs and/or drydocking, towing or being towed, assisting other vessels, making trial trips and adjusting instruments. Anything done or not done in accordance with Clause 9.1 or any delay arising therefrom shall be deemed to be within the contractual carriage and shall not be a deviation.

## **10 MULTIPLE BILLS OF LADING**

10.1 Goods will only be delivered in a Container to an individual Merchant if all Bills of Lading in respect of the content of the Container have been surrendered authorising delivery to that Merchant at a single Place of Delivery. In the event that this requirement is not fulfilled the Carrier may in its absolute discretion unpack the Container and, in respect of Goods for which Bills of Lading have been surrendered, deliver them to the Merchant. Such delivery shall constitute due delivery hereunder but will only be effected against payment by the Merchant of the appropriate charges.

10.2 If multiple Bills of Lading are issued in respect of the contents of a Container, then the particular of the Goods described on the face hereof are said to comprise part of the contents of the Container indicated. If the Carrier is required to deliver the Goods to more than one Merchant and if all or part of the total Goods within the Container consists of bulk Goods or unappropriated Goods, or is or becomes mixed or unmarked or unidentifiable, the Merchants shall take delivery thereof (including any damaged portion) and bear any shortage in such proportions as the Carrier shall in its absolute discretion determine, and such delivery shall constitute due delivery hereunder. In such event the Carrier shall not be liable for any shortage, loss, or damage of the Goods or other discrepancies of the Goods, which are found upon unpacking of the Container.

## **11 MATTERS AFFECTING PERFORMANCE**

11.1 If at any time the Carriage is or is likely to be affected by any hindrance, risk, danger, delay, difficulty or disadvantage of whatsoever kind and howsoever arising which cannot be avoided by the Carrier by the exercise of reasonable endeavours, (even though the circumstances giving rise to such hindrance, risk, danger, delay, difficulty or disadvantage existed at the time this contract was entered into or the Goods were received for the Carriage) the Carrier may at its sole discretion and without notice to the Merchant and whether or not the Carriage is commenced either:

11.1.1 carry the Goods to the contracted Port of Discharge or Place of Delivery, whichever is applicable, by an alternative route to that indicated in this Bill of Lading or to that which is customary for Goods consigned to that Port of Discharge or Place of Delivery, If the Carrier elects to invoke the terms of this sub-Clause, then, notwithstanding the provisions of Clause 9 hereof, the Carrier shall be entitled to charge such additional Freight as the Carrier may determine, or

11.1.2 suspend the Carriage of the Goods and store them ashore or afloat upon the terms of this Bill of Lading and endeavor to forward them as soon as possible, but the Carrier makes no representation as to the maximum period of suspension. If the Carrier elects to invoke the terms of this sub-Clause, notwithstanding the provisions of Clause 9 hereof, then the Carrier shall be entitled to the payment of such additional Freight and costs as the Carrier may determine, or

11.1.3 abandon the Carriage of the Goods and place the Goods at the Merchant's disposal at any port or place where the Carrier may deem safe and convenient, whereupon the responsibility of the



Carrier in respect of such Goods shall entirely cease. The Carrier shall nevertheless be entitled to full Freight on the Goods received for the Carriage, and the Merchant shall pay any additional costs incurred by reason of the abandonment of the Goods.

11.2 Where the Carrier elects to use an alternative route under Clause 11.1.1 or to suspend the Carriage under Clause 11.1.2, same shall not prejudice its right subsequently to abandon the Carriage.

## **12 INSPECTION OF GOODS**

12.1 The Carrier shall be entitled, but under no obligation, to open and/or scan any Container at any time and to inspect the contents.

12.2 If it thereupon appears at any time that the contents or any part thereof cannot safely or properly be carried or carried further, either at all, or without incurring any additional expense or taking any measures in relation to the Container or its contents or any part thereof, the Carrier may in its absolute discretion, without notice to the Merchant, and at the Merchant's sole risk and costs, to abandon the Carriage thereof and/or take any measures and/or incur any reasonable additional expense to carry and/or to continue the Carriage and/or to sell or dispose of the Goods and/or to store the same ashore or afloat under cover or in the open, at any place, which sale, disposal, abandonment or storage shall be deemed to constitute due delivery under this Bill of Lading. The Merchant shall indemnify the Carrier against any reasonable additional expense so incurred.

12.3 The Carrier is not responsible for any damage or loss to the Goods resulting from inspection by customs or other authorities and the Merchant shall be responsible for any costs, fines, or penalties incurred as a result of such inspection or otherwise.

12.4 The Carrier in exercising the liberties contained in this clause shall not be under any obligation to take any particular measures and shall not be liable for any loss, delay or damage howsoever arising from any action or lack of action under this clause.

## **13 MERCHANT-STUFFED CONTAINER**

If a Container has not been packed by or on behalf of the Carrier:

13.1 This Bill of Lading shall be a receipt only for such a Container. The Merchant shall inspect the Container for suitability for carriage of the Goods before packing it, and the Merchant's use of the Container shall be prima facie evidence of its being sound and suitable for use.

13.2 The Carrier shall not be liable for loss of or damage to the Goods packed therein and the Merchant shall indemnify the Carrier against any injury, loss, damage, liability or expense whatsoever incurred by the Carrier if such loss of or damage to the Goods and/or such injury, loss, damage, liability or expense has been caused by any matter beyond his control including, inter alia, without prejudice to the generality of this exclusion:

13.2.1 the manner in which the Goods have been packed, stowed, stuffed or secured in the Container, or

13.2.2 the unsuitability of the Goods for the Carriage in the Container Carriage, or

13.2.3 the unsuitability or defective condition of the Container, or

13.2.4 the incorrect setting of any refrigeration controls thereof, provided that, if the Container has been supplied by or on behalf of the Carrier, this unsuitability or defective condition would have been apparent upon inspection by the Merchant at or prior to the time when the Container was packed, or

13.2.5 packing refrigerated Goods that are not properly pre-cooled to the correct temperature for

the Carriage or before the refrigerated Container has been properly pre-cooled to the correct carrying temperature.

13.3 The Merchant is responsible for the packing and sealing of all Merchant-packed Containers and, if a Merchant-packed Container is delivered by the Carrier with an original seal as affixed by the Merchant or customs or security control intact, or the Carrier can establish bona fide circumstances in which the original seal was replaced, the Carrier shall not be liable for any shortage of Goods ascertained upon delivery, and unless the Merchant could prove that the original seal was replaced or damaged by the Carrier or its agent in bad faith.

13.4 If a claim for shortage is made against the Carrier, the Merchant agrees to indemnify the Carrier against all and any costs (including, but without limitation, legal costs), expenses, liabilities or losses of whatsoever nature suffered and/or incurred in connection with any such claim.

13.5 The Merchant shall indemnify the Carrier against any loss, damage, liability or expense whatsoever and howsoever arising caused by one or more of the matters referred to in Clause 13.2, including but not limited to damage to Container, other cargo and the Vessel.

#### **14 SPECIAL, REFRIGERATED OR HEATED CONTAINER**

14.1 Unless it is noted on the front of this Bill of Lading that the Goods will be carried in a ventilated, refrigerated or heated or otherwise specifically equipped Containers and the Merchant has given proper written notice to the Carrier before the Carriage of the nature of the Goods and of the particular temperature range to be maintained and/or other setting of the thermostatic, ventilation or other special controls, and/or any special attention required and the Merchant pays the extra Freight charged under the Carrier's Tariff or as agreed, the Goods shall be carried in ordinary unventilated Containers.

14.2 In case of a refrigerated Container stuffed by or on behalf of the Merchant, the Merchant undertakes that its thermostatic, ventilating or any other controls have been correctly set by the Merchant and that the temperature of the Goods and the refrigerated Container has been brought to the required temperature level before stuffing and that the Goods have been properly stowed in the Container before the receipt thereof by the Carrier. If these requirements are not fully met, the Carrier shall not be liable for any loss of or damage to the Goods howsoever arising.

14.3 The Merchant shall be responsible for the operation and maintenance of the Carrier's Container while it is in the Merchant's custody or the custody of anyone acting on the Merchant's behalf.

14.4 If a suggested temperature is noted on the front of this Bill of Lading, the Merchant shall deliver the Goods to the Carrier at the noted temperature plus or minus 2°C permitted, and the Carrier shall exercise due diligence to maintain such temperature, plus or minus 2°C while the Goods during the Carriage.

14.5 The Merchant hereby acknowledge that refrigerated Containers are not designed

- (a) to freeze down cargo which has not been presented for stuffing at or below its designated carrying temperature and the Carrier shall not be responsible for the consequences of cargo being presented at a higher temperature than that required for the Carriage; nor
- (b) to monitor and control humidity levels, albeit a setting facility exists, in that humidity is influenced by many external factors and the Carrier does not guarantee the maintenance of any intended level of humidity inside any Container.

14.6 The term “apparent good order and condition” when used in this bill of lading with reference to goods which require refrigeration, ventilation or other specialised attention does not mean that the Goods, when received, were verified by the Carrier as being at the carrying temperature, humidity level or other condition designated by the Merchant.

14.7 The Carrier does not warrant that the Container be properly ventilated, refrigerated or heated throughout the Carriage, nor shall the Carrier be liable for any loss of or damage to the Goods arising from any latent defects, any total or partial failure or breakdown, defrosting, stoppage of the refrigerating, ventilating or any other specialised machinery, plant, insulation and/or any apparatus of the Container, Vessel, conveyance and any other facilities, provided that the Carrier shall before or at the beginning of the Carriage exercise due diligence to maintain the refrigerated Container in an efficient state.

14.8 In case of the Merchant's own Container, a set of emergency kit and an operation manual shall be supplied by the Merchant.

## **15 DANGEROUS GOODS AND CONTRABAND**

15.1 The Merchant undertakes not to tender for transportation any Goods which are of a dangerous, inflammable, radioactive or damaging nature without previously giving written notice of their nature to the Carrier and marking the Goods and their Container or other covering on the outside as required by any laws or regulations which may be applicable during the Carriage.

15.2 Goods which are or at any time become dangerous, inflammable, radioactive or damaging may, at any time or place, be unloaded, destroyed, or rendered harmless without compensation, and if the Merchant has not given notice of their nature to the Carrier under Clause 15.1, the Carrier shall be under no liability to make any general average contribution in respect of such Goods.

15.3 The Merchant warrants the Goods are lawful Goods and undertakes not to deliver to the Carrier any Containers or Goods containing any contraband.

15.4 If the requirements of Clauses 15.1 and Clauses 15.3 are not complied with, the Merchant shall indemnify the Carrier against all loss, damage or expense of whatsoever nature and howsoever arising out of such Goods or Containers being tendered for transportation or delivered to or handled or carried by the Carrier.

## **16 OPTIONAL STOWAGE, DECK CARGO AND LIVESTOCK**

16.1 Goods, whether packed in Containers or not, may be carried on deck or under deck without notice to the Merchant unless it is specifically stipulated on the front hereof that the Containers or Goods will be carried under deck. If carried on deck, the Carrier shall not be required to note, mark or stamp on the Bill of Lading any statement of such on-deck carriage. Save as provided in Clause 16.2 such Goods (except livestock) carried on or under deck and whether or not stated to be carried on deck shall participate in general average and shall be deemed to be within the definition of Goods for the purpose of the Hague Rules or Hague-Visby Rules or COGSA or any compulsorily applicable legislation and shall be carried subject to such Rules or Act, whichever is applicable.

16.2 Goods which are out of gauge and/or are stowed on or in open top containers, flatracks or platforms, and which are stated on the front hereof to be carried on deck, and all livestock whether carried on deck or under deck, are carried without any responsibility whatsoever on the part of the Carrier for loss or damage of whatsoever nature or delay arising during the Carriage whether caused by

unseaworthiness or negligence or any other cause whatsoever and the Hague Rules or Hague-Visby Rules or COGSA shall not apply.

## **17 DESCRIPTION OF GOODS**

17.1 This Bill of Lading shall be prima facie evidence of the receipt by the Carrier in external apparent good order and condition, except as otherwise noted, of the total number of Containers or other packages or units indicated on the face hereof as "Total Number of Containers/Packages received and acknowledged by the Carrier".

17.2 No representation is made by the Carrier as to the weight, contents, measure, quantity, quality, description, condition, temperature, marks, numbers or value of the Goods and the Carrier shall be under no responsibility whatsoever in respect of such description or particulars.

17.3 If any particulars of any letter of credit and/or import license and/or sales contract and/or invoice or order number and/or details of any contract to which the Carrier is not a party are shown on the front hereof, such particulars are included at the sole risk of the Merchant and for his convenience. The Merchant agrees that the inclusion of such particulars shall not be regarded as a declaration of value and shall in no circumstances whatsoever increase the Carrier's liability under this Bill of Lading, and the Merchant agrees to indemnify the Carrier for any increased liability so caused, including reasonable legal expenses and costs.

## **18 SHIPPER'S/MERCHANT'S RESPONSIBILITY**

18.1 All of the Persons coming within the definition of Merchant in Clause 1 shall be jointly and severally liable to the Carrier for the due fulfillment of all obligations undertaken by the Merchant in this Bill of Lading.

18.2 The Merchant warrants to the Carrier that the particulars relating to the Goods as set out on the face of this Bill of Lading have been checked by or on behalf of the Merchant on receipt of this Bill of Lading and that such particulars, and any other particulars furnished by or on behalf of the Merchant, are adequate, accurate and correct. The Merchant warrants that the Goods are safely and securely packed in the Container.

18.3 The Merchant also warrants that the Goods and/or Merchant-packed Containers are lawful Goods, contain no contraband, drugs, other illegal substances or stowaways, and that any hazardous or potentially dangerous characteristics of the Goods have been fully disclosed by or on behalf of the Merchant and that they will not cause loss, damage or expense to the Carrier, or to any other cargo, Containers, Vessel or Person during the Carriage. The Merchant shall indemnify and hold the Carrier harmless against all liabilities, costs, losses, damages, fines, penalties, expenses or other sanctions of a monetary nature arising or resulting from any breach of the warranties.

18.4 The Merchant shall comply with all regulations or requirements of customs, port and other authorities, and shall bear and pay all duties, taxes, fines, imposts, expenses or losses (including, without prejudice to the generality of the foregoing. Freight for any additional Carriage undertaken) incurred or suffered by reason of failure to so comply, or by reason of any illegal, incorrect, inaccurate or insufficient marking, numbering or addressing of the Goods, and shall indemnify the Carrier in respect thereof, including without limitation reasonable legal expenses and costs to defend any action brought by third parties or to prosecute any claim against the Merchant arising from the Merchant's obligation(s) under this Bill of Lading.

18.5 If Containers supplied by or on behalf of the Carrier are unpacked by or for the Merchant the Merchant shall redeliver within the time prescribed, to a place nominated by the Carrier, the Containers and other equipment in and the same condition as received, undamaged, empty, odour free, cleaned and with all fittings installed by the Merchant removed and without any rubbish, dunnage or other debris inside. The Merchant shall be liable to indemnify the Carrier for any and all costs incurred repairing or replacing Containers and/or other equipment as a result of the Merchant's failure to return such Containers and/or other equipment in the condition as specified above, including the reasonable legal expenses and costs of recovering the costs incurred and interest thereon.

18.6 The Carrier's Containers and other equipment released into the care of the Merchant or the Merchant's agent for packing, unpacking or any other purpose whatsoever are at the sole risk of the Merchant until redelivered to the Carrier. The Merchant shall indemnify the Carrier for all loss of and/or damage and/or delay to such Containers, and all liability claims from third parties or costs or fines resulting from Merchant's use of such Containers. The Merchant is deemed to be aware of the dimensions and capacity of any Containers released into its care.

## **19 NOTIFICATION AND DELIVERY**

19.1 Any mention herein of parties to be notified of the arrival of the Goods is solely for information of the Carrier, and failure to give such notification shall not give rise to any liability on the part of the Carrier or relieve the Merchant of any obligation hereunder.

19.2 The Merchant shall take delivery of the Goods within the time provided for in the Carrier's applicable Tariff or as required by the Carrier.

19.3 If the Merchant fails to take delivery of the Goods (or any part thereof) upon expiration of the Tariff's prescribed free time, or whenever in the opinion of the Carrier the Goods (or any part thereof) are likely to deteriorate, decay, become worthless or incur charges whether for storage or otherwise in excess of their value, the Carrier may, at its absolute discretion, without prejudice to any rights which it may have against the Merchant, without notice and without any responsibility whatsoever attaching to him, but subject to its lien, unstuff, sell, destroy, dispose, and/or store or warehouse the Goods or any part thereof ashore, afloat, in the open or under cover at the sole risk and expense of the Merchant, and apply any proceeds of sale in reduction of the sums due to the Carrier from the Merchant. The Goods shall be deemed to have been delivered to the Merchant as under Clause 19.3 and thereupon all liability whatsoever of the Carrier in respect of the Goods thereof shall cease.

19.4 Where the Carrier is obliged to hand over the Goods so carried into the custody of the port, customs or any other Authorities at the Port of Discharge or Place of Delivery and the Goods are delivered by the same to the Merchant without necessity of production of this Bill of Lading by the Merchant as required by the local law, regulation and/or practice, such hand-over shall constitute due delivery to the Merchant under this Bill of Lading and thereupon the liability of the Carrier in respect of the Goods shall entirely cease.

19.5 Refusal by the Merchant to take delivery of the Goods in accordance with the terms of this Clause, notwithstanding its having been notified of the availability of the Goods for delivery, shall constitute an irrevocable waiver by the Merchant to the Carrier of all and any claims whatsoever relating to the Goods or the Carriage. The Merchant shall be liable for any losses, damages, expenses and liabilities incurred and sustained by the Carrier arising from such refusal, including but not limited to, the return of the Goods to their place of origin.

19.6 In all circumstances, the Carrier shall have no liability whatsoever for the misdelivery of Goods in its actual or constructive possession to persons holding forged or fraudulent documents which reasonably purport to be original Bills of Lading or other original documents entitling them to possession, so long as the Carrier acts innocently and does not intentionally deliver the Goods to persons known by him to have no right to possession under the Bill of Lading.

## **20 FREIGHT AND CHARGES**

20.1 All Freight shall be deemed fully, finally and unconditionally earned on receipt of the Goods by the Carrier and shall be paid and non-returnable in any event whatsoever.

20.2 All Freight and charges shall be payable to the Carrier and due on demand and shall be paid without any set-off, counter-claim, deduction, or stay of execution before delivery of the Goods.

20.3 The Merchant's attention is drawn to the stipulations concerning currency in which the Freight is to be paid, rate of exchange, devaluation, additional insurance premiums and other contingencies relative to the Freight in the applicable Tariff or as agreed otherwise.

20.4 If the Merchant's description of the Goods in this Bill of Lading or in any document or certificate furnished to the Carrier by or on behalf of the Merchant shall prove to have been inaccurate, incorrect or misleading in any respect, the Merchant shall pay for the actual damage suffered by the Carrier.

20.5 Full Freight shall be payable based on particulars furnished by or on behalf of the Shipper. The Carrier may at any time open the Goods or Container(s) and, if the Shipper's particulars are incorrect the Merchant and the Goods shall be liable for the correct Freight and any expenses incurred in examining, weighing, measuring, or valuing the Goods.

20.6 Payment of Freight and charges to any freight forwarder or broker, or anyone other than the Carrier or its authorized agent, shall not be deemed payment to the Carrier and shall be made at the Merchant's sole risk.

20.7 If the Merchant fails to pay the Freight when due the Merchant shall be liable also for payment of service fee, interest due on any outstanding and/or overdue sum reasonable, attorney fees and expenses incurred in collecting any sums due to the Carrier.

All the persons coming within the definition of Merchant shall be and remain jointly and severally responsible for all freight and charges due under this Bill of Lading, applicable tariffs and/or contracts together with any court costs, expenses and reasonable attorney fees incurred in collecting any sums due to Carrier. Notwithstanding the acceptance by the Carrier of instructions to collect Freight, duties, fees, demurrage/detention and costs and expenses from the shipper or consignee or any other Person, in the absence of evidence of payment (for whatever reason) by such shipper or consignee or other Person when due, the Merchant shall remain responsible for the payment of such Freight, duties, fees, demurrage/detention and costs and expenses on receipt of evidence of demand within the meaning of Clause 20.2.

## **21 LIEN**

21.1 The Carrier shall have a lien on the Goods and any documents relating thereto, which shall survive delivery, for any sum due or payable to the Carrier under this and/or any other contract with the Merchant, or on account of the Goods or Carriage, storage or handling of the Goods, including but not limited to Freight, dead Freight, demurrage, detention, and any expenses incurred by the Carrier for recovering, repacking, remarking, fumigation or required disposal of faulty Goods, and/or General Average contributions to whomsoever due, and/or for the cost recovering the same and/or any fines,

penalties, dues, tolls, land Freight, or commissions paid or advanced by the Carrier for the Goods or on behalf of the Merchant, for any sums including salvage payable to the Carrier under this Bill of Lading and for legal expenses incurred because of any attachment or other legal proceedings brought against the Goods by governmental Authorities or any person claiming an interest in the Goods.

21.2 The Carrier may exercise its lien at any time and any place in its sole discretion, through the action of any servant, agent or Subcontractor, whether the contractual carriage is completed or not.

21.3 The Carrier shall have the right to sell any Goods liened by public auction or private treaty, without notice to the Merchant. Nothing herein shall prevent the Carrier from recovering from the Merchant the difference between the amount due to the Carrier and the net amount realised by such sale.

## **22 GENERAL AVERAGE AND SALVAGE**

22.1 General Average shall be adjusted at any port or place at the option of the Carrier in accordance with the York - Antwerp Rules 1994 and any subsequent modification or re-enactment thereto and shall be applied to Containers and/or Goods loaded on deck or under deck. Any general average on a vessel not operated by the Carrier shall be adjusted according to the requirement of the operator of that vessel.

22.2 Should the Carrier in its own discretion choose to post general average and/or salvage security due from cargo interests or pay general average and/or salvage contributions due from cargo interests, the Merchant hereby assigns to the Carrier all his rights in respect of the general average and/or salvage.

22.3 Upon request and within a reasonable time, the Merchant shall give such cash deposit or other security to any third party or counter security to the Carrier as the Carrier may deem sufficient to cover the estimated General Average contribution of the Goods and any salvage and special charges thereon before delivery of the Goods.

22.4 In the event of accident, danger, damage or disaster before or after the commencement of the voyage, resulting from any cause whatsoever, due to negligence or not, for which, or for the consequence of which, the Carrier is not responsible, by statute, contract or otherwise, the Goods and the Merchant shall jointly and severally contribute with the Carrier in general average in the payment of any sacrifices, loss or expenses of a general average nature that may be made or incurred, and shall pay salvage and special charges incurred in respect of the Goods. All expenses in connection with a general average or salvage act to avoid damage to the environment shall always be considered general average expenses.

If a salvaging vessel is owned or operated by the Carrier, salvage shall be paid for as fully and in the same manner as if such salvaging ship belonged to strangers.

22.5 In the event of the Master at his sole discretion considering that salvage services are needed, the Merchant agrees that the Master may act as his agent to procure such services to Goods and that the Carrier may act as his agent to settle salvage remuneration.

## **23 BOTH-TO-BLAME COLLISION**

If the Vessel comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or default of the Master, Mariner, Pilot or the servants of the Carrier in the navigation or in the management of the Vessel, the Merchant shall indemnify the Carrier or where the Carrier is

not the owner and in possession of the carrying Vessel, to pay to the Carrier as trustee for the owner and/or demise charterer of the carrying Vessel, a sum sufficient to indemnify the Carrier and/or the owners and/or demise charterer of the carrying Vessel against all loss or liability to the other or non-carrying ship or her Owners in so far as such loss or liability represents loss of, or damage to, or any claim whatsoever of the Merchant, paid or payable by the other or non-carrying ship or her Owners to the Merchant and set-off, recouped or recovered by the other or non-carrying ship or her Owners as part of their claim against the carrying Vessel or Carrier. The foregoing provisions shall also apply where the Owners, operators or those in charge of any ship or ships or objects other than, or in addition to, the colliding ships or objects are at fault in respect of a collision, contact, stranding or other accident.

#### **24 VARIATION OF CONTRACT**

No servant, agent or Subcontractor of the Carrier shall have the power to waive or vary any of the terms hereof unless such waiver or variation is in writing and is specifically authorized or approved in writing by the Carrier.

#### **25 LAW AND JURISDICTION**

25.1 This Bill of Lading, the contract contained in and/or evidenced hereby, and the rights and obligations of all parties concerned in connection with the Carriage of the Goods hereunder shall be governed by and construed in accordance with the laws of Hong Kong Special Administrative Region.

25.2 Any dispute, controversy, difference or claim arising out of or relating to this contract of Carriage evidenced by this Bill of Lading, including the existence, validity, interpretation, performance, breach or termination thereof or any dispute regarding non-contractual obligations arising out of or relating hereto shall be submitted to the Courts of Hong Kong.

Notwithstanding the above, the Carrier is also entitled to commence arbitration or court proceedings at the relevant place where it considers suitable, including but not limited to the defendant has its registered office or place of business.

25.3 If the Carriage of Goods hereunder is foreign trade to, from or through a port in the United States or if COGSA shall for any reason whatsoever apply compulsorily to the Carriage of the Goods hereunder then this Bill of Lading, the contract contained in and/or evidenced hereby, and the rights and obligations of all parties concerned in connection with the Carriage of the Goods hereunder shall be governed by and construed in accordance with United States law and all claims, suits, proceedings or disputes howsoever arising in connection with such Bill of Lading, contract, rights and obligations shall be determined in accordance with United States law.

25.4 This Law and Jurisdiction Clause is intended solely for the Carrier's benefit and may be unilaterally waived by the Carrier, in whole or in part, before or after proceedings are commenced.

#### **SEA WAYBILL TERMS AND CONDITIONS**

1. Received by the Carrier from the Shipper in apparent good order and condition (unless otherwise noted herein) the total number of Containers or other packages or units enumerated on the front of



this Sea Waybill, for Carriage from the Place of Receipt or Port of Loading, whichever is applicable, to the Place of Delivery or Port of Discharge, whichever is applicable, according to the terms of the contract evidenced by this Sea Waybill.

2. Unless instructed otherwise in writing by the Shipper, delivery of the Goods will be made to the Consignee or his authorised representative. Delivery to be made upon proper proof of identity and authorisation without the need of producing or surrendering a copy of this Sea Waybill.

3. The contract evidenced by this Sea Waybill is subject to the terms, conditions, exceptions, limitations and liberties (including those relating to pre-carriage and on-carriage) set out in and incorporated by the Carrier's Combined Transport Bill of Lading. The terms of the Carrier's applicable Tariff(s) are also incorporated herein. Particular attention is drawn to the terms therein relating to Container and vessel demurrage.

Unless the context otherwise requires, the term or any reference to "Bill of Lading" and "applicable Tariff(s)" wherever appearing in the Carrier's Bill of Lading shall be deemed to include and refer to this Sea Waybill.

The Shipper accepts the said terms, conditions, exceptions, limitations and liberties on its own behalf and on behalf of the Consignee and the Owner of the Goods and warrants that it has authority to do so.

4. The Consignee by presenting this Sea Waybill and/or by requesting delivery of the Goods undertakes all liabilities of the Shipper hereunder, such undertaking being additional and without prejudice to the Shipper's own liability. The benefit of the contract evidenced by this Sea Waybill shall thereby be transferred to the Consignee.

5. The Hague or Hague-Visby Rules, whichever would have been applicable if this Sea Waybill were a Bill of Lading shall apply to the contract evidenced by this Sea Waybill. The contract evidenced by this Sea Waybill is deemed to be a contract of Carriage as defined in Article 1(b) of the Hague Rules and the Hague-Visby Rules.

6. The contract evidenced by this Sea Waybill is subject to the CMI Uniform Rules for Sea Waybills.

7. The contract evidenced by or contained in this Sea Waybill shall be governed by the laws of Hong Kong Special Administrative Region. Subject to Clause 25.2 of the Carrier's Combined Transport Bill of Lading Terms, all disputes relating to this contract shall be determined by the Courts of Hongkong unless the Carrier otherwise agrees in writing.

(as amended 0401)